



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/887,847	07/03/97	BAYCHAR	BAY-210

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IM22/0103

EXAMINER

SINGH, A

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 01/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/887,847

Applicant(s)

Baychar

Examiner
Ms. Arti R. Singh

Group Art Unit
1771



☒ Responsive to communication(s) filed on CPA filed 12/11/2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-5, 7, 8, 10, 11, and 13-26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 14-18 is/are allowed.

☒ Claim(s) 1 and 19 is/are rejected.

☒ Claim(s) 2-5, 7, 8, 10, 11, 13, and 20-26 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on 12/11/2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/887847 is acceptable and a CPA has been established. An action on the CPA follows:

Applicant has filed a CPA however there were no amendments/arguments filed in order to overcome the rejections made in the previous office action which at this point in prosecution are still maintained and for Applicant's convenience the rejections have been restated below.

Response to Amendment

2. The Examiner has carefully reviewed the amendments and accompanying remarks filed on 1/13/2000 which have been entered.
3. The original declaration listing the Applicant's name as "Baycharr" is found to be sufficient, and the objection is withdrawn.
4. The disclosure is objected to because of the following informalities: the first page of the specification should be amended to recite the relationship and status of the parent case, hence the objection is maintained. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 1 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ogden (US 5,727,336), substantially as is set forth in paper no. 6, paragraph 5.

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Ogden is relied upon for reasons of record in paragraph 5 of the previous office action, and further states in column 11, lines 10-35 that the cushioning layer which Examiner equates to be the foam layer of applicant, is preferably formed of a resilient cushioning material such as a latex foam or a sponge rubber foam which are inherently open celled foams. Thus, the patent, within it's "four corners" teaches polyurethane foam and teaches that the foams employed are open-celled.

Applicant argues that Ogden fails to teach open-celled foam. However, at column 11, lines 10-35, Ogden teaches that the foam material of the intermediate layer may be polyurethane or sponge rubber among other foams. Applicant is given Official Notice that sponge rubber is an open cell foam. Thus, Ogden teaches both PU and open cell foam. Inherently, then the patent teaches or at least implies polyurethane open-cell foam.

Allowable Subject Matter

7. Claims 14-18 are allowed. Claims 2-5, 7, 8, 10, 11, 13 and 20-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims are indicated as allowable because there was no prior art found that suggests or teaches the moisture transfer system as claimed.

Conclusion

8. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry regarding this communication or earlier communications from the Examiner should be directed to Ms. Arti Singh, whose telephone number is (703) 305-0291. The Examiner can normally be reached Monday through Friday from 8 AM to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor Mr. Terrel Morris, can be reached at (703) 308-2414. A Facsimile center has been established in Group 1700 on the 8th floor of Crystal Plaza 3. The hours of operation are Monday through Friday 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 305-5408. This location should be used in all instances when faxing any correspondence to Art Unit 1771. Use of the Group 1700 center will facilitate rapid delivery of materials to Examiners in Art Unit 1771.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-2351.



Ms. Arti Singh
Patent Examiner
Art Unit 1771
December 27, 2000



BLAINE COPENHEAVER
PRIMARY EXAMINER